

AMENDED IN SENATE JANUARY 14, 2016

AMENDED IN SENATE JANUARY 5, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 29, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 617

Introduced by Senator Block

February 27, 2015

An act to add *and repeal* Section 19.5~~to~~ of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Block. Crimes.

Existing law defines crimes as infractions, misdemeanors, or felonies. Existing law provides that when a crime is punishable in the discretion of the court as a felony or a misdemeanor, it is a misdemeanor for all purposes if certain circumstances are met. Existing law provides that when a defendant is committed to the Division of Juvenile Justice for a crime that is punishable in the discretion of the court as a felony or a misdemeanor punishable by incarceration in a county jail not exceeding one year, upon discharge of the defendant from the division, the crime is a misdemeanor for all purposes.

This bill would, subject to exceptions, allow misdemeanors punishable by a maximum term of confinement not exceeding 6 months in a county jail to be charged as a misdemeanor or an infraction, in the discretion of the prosecuting attorney, as specified. ~~The bill would prohibit a misdemeanor charged as an infraction pursuant to these provisions from~~

~~being punished by imprisonment and would specify that a person charged with an infraction is not entitled to have appointed counsel, unless specified conditions apply, or a trial by jury. This~~ *The bill would require an indigent person to be provided a public defender or appointed counsel for arraignment if charged with an infraction under these provisions. The bill would authorize a person charged with an infraction pursuant to these provisions to elect to have the charge elevated to a misdemeanor, with all the rights and consequences of a misdemeanor charge. The bill would require a district attorney who elects to charge infractions pursuant to these provisions to file a report with the Legislature no later than March 1, 2019, reporting information relating to the number of infractions that were filed for the district attorney's jurisdiction between January 1, 2017, and January 1, 2019, inclusive, and other specified data. The provisions of the bill would be repealed on January 1, 2020.*

By requiring local governments to provide a public defender or appointed counsel for indigent persons charged with an infraction under these provisions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19.5 is added to the Penal Code, to read:
2 19.5. (a) The Legislature finds and declares that there are
3 low-level misdemeanor offenses that, at the discretion of the
4 prosecuting attorney, and based on the facts of the committed
5 offenses, the lack of prior delinquency or criminality of the
6 offender, and the lack of the offender's need for supervision, can
7 be effectively prosecuted as infractions. The Legislature further
8 finds and declares that reducing these misdemeanors to infractions
9 will not compromise public safety, and that diverting low-level
10 misdemeanor offenders away from the criminal justice system and
11 the stigma associated with it will avoid costs associated with

1 protracted court involvement, jury trials, attorney representation,
2 confinement, and probation involvement.

3 (b) Except as provided by express statutory provisions providing
4 an alternative punishment or procedure, a crime punishable as a
5 misdemeanor with a maximum term of confinement not exceeding
6 six months in a county jail may be charged as a misdemeanor or
7 an infraction at the discretion of the prosecuting attorney.

8 ~~(c) A crime charged as a misdemeanor shall not be reduced to~~
9 ~~an infraction except at the discretion of the prosecuting attorney~~
10 ~~pursuant to this section, or pursuant to express statutory provisions~~
11 ~~providing an alternative punishment or procedure. The prosecuting~~
12 ~~attorney may reduce the misdemeanor charge to an infraction~~
13 ~~pursuant to this section at any time before trial.~~

14 ~~(d) A person charged with an infraction pursuant to this section~~
15 ~~is subject to Section 19.6 and shall not be punished by~~
16 ~~imprisonment, shall not be entitled to trial by jury, and shall not~~
17 ~~be entitled to have the public defender or other counsel appointed~~
18 ~~at public expense to represent him or her unless he or she is arrested~~
19 ~~and not released on his or her written promise to appear, his or her~~
20 ~~own recognizance, or a deposit of bail.~~

21 ~~(e) Notwithstanding subdivision (d), a~~

22 ~~(c) A person charged with an infraction pursuant to this section~~
23 ~~is subject to Section 19.6.~~

24 ~~(d) An indigent person charged with an infraction pursuant to~~
25 ~~this section shall be entitled to have the public defender or other~~
26 ~~counsel appointed at public expense to represent the person at~~
27 ~~arraignment.~~

28 ~~(e) A person charged with an infraction pursuant to this section~~
29 ~~shall have the right to elect that the charge be brought as a~~
30 ~~misdemeanor and, if that election is made, shall have all of the~~
31 ~~rights, privileges, punishments, consequences, fines, penalties, and~~
32 ~~disabilities afforded those charged with a misdemeanor. The person~~
33 ~~charged shall be notified of this right in writing or in person before~~
34 ~~a disposition of the charge is accepted.~~

35 ~~(f) An offense charged as an infraction pursuant to this section~~
36 ~~is punishable by a fine not to exceed two hundred fifty dollars~~
37 ~~(\$250), except where a lesser fine is expressly prescribed.~~

38 ~~(g) This section shall not apply to the following offenses:~~

39 ~~(1) A misdemeanor firearms violation.~~

- 1 (2) A misdemeanor violation of the requirement to register
2 pursuant to Chapter 5.5 (commencing with Section 290) of Title
3 9 of Part 1.
- 4 (3) A misdemeanor violation of a crime for which a person is
5 required to register pursuant to Section 290.
- 6 (4) A misdemeanor child endangerment or child abuse violation.
- 7 (5) A misdemeanor elder abuse violation.
- 8 (6) A misdemeanor domestic violence violation.
- 9 (7) A misdemeanor driving-under-the-influence violation.
- 10 (8) A misdemeanor sex offense.
- 11 (9) A misdemeanor that is imposed by an initiative statute that
12 does not permit a lesser punishment.
- 13 (10) A misdemeanor violation resulting in restitution being
14 owed to a victim.
- 15 (11) *A misdemeanor violation of Division 5 (commencing with*
16 *Section 6300) of the Labor Code.*
- 17 (12) *A misdemeanor for any of the following:*
- 18 (A) *A violation of Division 26 (commencing with Section 39000)*
19 *of the Health and Safety Code pertaining to air pollution.*
- 20 (B) *A violation of Division 7 (commencing with Section 13000)*
21 *of the Water Code pertaining to water pollution.*
- 22 (C) *A violation pertaining to hazardous waste. For purposes of*
23 *this subdivision, “hazardous waste” means hazardous waste as*
24 *defined in Section 25117 or 25141 of the Health and Safety Code*
25 *and subject to regulation pursuant to Chapter 6.5 (commencing*
26 *with Section 25100) of Division 20 of the Health and Safety Code.*
- 27 (D) *A violation pertaining to medical waste. For purposes of*
28 *this subdivision, “medical waste” means medical waste subject*
29 *to regulation pursuant to Part 14 (commencing with Section*
30 *117600) of Division 104 of the Health and Safety Code.*
- 31 (E) *A violation of Sections 12500 to 14103, inclusive, of the*
32 *Food and Agricultural Code, pertaining to pesticides.*
- 33 (F) *A violation pertaining to a public nuisance.*
- 34 (G) *A violation of the Fish and Game Code pertaining to*
35 *pollution.*
- 36 (h) *A district attorney who charges infractions pursuant to this*
37 *section shall report the following for his or her jurisdiction for the*
38 *period January 1, 2017, to January 1, 2019, inclusive, to the*
39 *Legislature by March 1, 2019:*

1 (1) *The number of cases filed as an infraction pursuant to this*
2 *section, by year.*

3 (2) *The number of filings for each crime filed as an infraction*
4 *pursuant to this section, by year.*

5 (3) *The perceived race or ethnicity and gender of the defendant*
6 *in the cases filed as infractions, if that information is available.*

7 (4) *The number of defendants whose cases proceeded as an*
8 *infraction pursuant to this section, by year.*

9 (5) *The number of defendants who elected to proceed with a*
10 *misdemeanor charge instead of an infraction, by year.*

11 (i) *A report submitted pursuant to subdivision (h) shall be*
12 *submitted in compliance with Section 9795 of the Government*
13 *Code. The requirement for submitting a report imposed by*
14 *subdivision (h) is inoperative on March 1, 2024, pursuant to*
15 *Section 10231.5 of the Government Code.*

16 (j) *This section shall remain in effect only until January 1, 2020,*
17 *and as of that date is repealed, unless a later enacted statute, that*
18 *is enacted before January 1, 2020, deletes or extends that date.*

19 SEC. 2. *No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *the only costs that may be incurred by a local agency or school*
22 *district will be incurred because this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the penalty*
24 *for a crime or infraction, within the meaning of Section 17556 of*
25 *the Government Code, or changes the definition of a crime within*
26 *the meaning of Section 6 of Article XIII B of the California*
27 *Constitution.*